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No. 84-1526

In the Supreme Court of the United States

OCTOBER TERM, 1984

BRUCE QUINN AND $196,330 UNITED STATES CURRENCY,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Acting Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

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Petitioner contends that the court of appeals erred in dismissing for lack of jurisdiction his appeal of the district court's judgment ordering the forfeiture of currency when, despite ample warnings, petitioner failed to seek a stay of the judgment in the district court and the currency was transferred to the United States Treasury pursuant to the judgment.

1. The district court found the following relevant facts. Drug Enforcement Administration (DEA) agents in Detroit observed petitioner and a man named Humphries board an airplane to Los Angeles. The agents recognized Humphries as a courier for Sylvester Murray, a major Detroit narcotics dealer.[1] Airport security personnel informed the agents that

[1]The DEA also knew that petitioner fit the description of a Los Angeles hairdresser named Bruce who reportedly had met with Murray in Los Angeles regarding a heroin deal less than three weeks previously (see U.S. Motion for Summary Judgment at 8).

the men were carrying large quantities of cash. A DEA agent and a police officer met petitioner and Humphries in Los Angeles. After first denying that he was carrying money or that he knew petitioner, Humphries opened his suitcase and showed the agent about $100,000 in cash, which he said belonged to petitioner. He refused to say anything more, claiming that he would be killed if he cooperated with law enforcement officials. Petitioner agreed to a search of his bag, which contained $96,300. He said that he was a well-known hair stylist and that he had earned all the money. The DEA agent seized the cash and issued petitioner a receipt. Findings of Fact and Conclusions of Law at 2-5.

The government brought a civil forfeiture proceeding under 21 U.S.C. 881(a)(6), which provides for the forfeiture of money obtained from narcotics transactions.[2] On the government's motion for summary judgment, the district court held that probable cause existed to believe that the currency seized from petitioner was related to narcotics sales, for three reasons. First, petitioner and Humphries were known to have connections with drug dealers. Second, they were carrying large quantities of cash. And, third, Humphries' claim that he would be killed if he cooperated with law enforcement officials permitted an inference that he was involved in the sale of narcotics. Since the government had established that it was probable that the currency was related to narcotics sales, the burden shifted to petitioner to establish that the seized currency was not related to narcotics. Because petitioner merely repeated his claim that the money was his, and offered no explanation of why

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[2]Section 881(a)(6) provides that "[a]ll moneys * * * furnished or intended to be furnished by any person in exchange for a controlled substance * * *, all proceeds traceable to such an exchange, and all moneys * * * used or intended to be used to facilitate any violation of * * *" Subchapter I of Title 21 of the United States Code are subject to forfeiture to the United States.

he was carrying almost $200,000 in small denominations across the country, the court found that he had failed to carry this burden and granted summary judgment in favor of the government. Findings of Fact and Conclusions of Law at 6-7.

2. Petitioner filed a notice of appeal but did not seek a stay of execution of the judgment from the district court. On January 9, 1984, the government notified petitioner that it intended to enforce the judgment on January 23, 1984, and enclosed a copy of the Ninth Circuit's recent opinion in *United States* v. *$57,480.05 United States Currency*, 722 F.2d 1457 (1984), another forfeiture case brought under Section 881. In that case, the court held that a claimant must request a stay from the district court to prevent removal of the res from the court's jurisdiction, because the courts lose jurisdiction over an in rem forfeiture proceeding after the res is transfered to the Treasury. See Motion to Dismiss Appeal at 1 & Exh. B. Nevertheless, petitioner did not seek a stay from the district court, but instead sought a stay in the Ninth Circuit. On February 7, 1984, a panel of the Ninth Circuit issued an order denying petitioner's motion for a stay (Pet. App. 1a). Citing Fed. R. App. P. 8(a), the court noted that petitioner should first apply for a stay in the district court. The court also noted that petitioner had failed to make any showing regarding the balance of hardships or his likelihood of success on the merits, as required to obtain a stay (Pet. App. 1a).

On February 13, 1984, a government attorney informed petitioner that, unless he filed an application for a stay in the district court on or before February 21, 1984, the currency would be transferred to the United States Treasury, an action that would remove the basis of the court of appeals' jurisdiction (Motion to Dismiss Appeal at 1 & Exh. C). On February 17, 1984, petitioner filed in the Ninth Circuit a petition for rehearing of its denial of his motion for a stay. In

his memorandum in support of his petition, petitioner claimed that he had not filed a motion for a stay before the district court because the court "is strongly biased in favor of the Government and it would be a waste of time to petition said Court for any relief" (Petition for Rehearing at 2-3). On February 23, 1984, the DEA forwarded the currency to the Treasury. The Ninth Circuit denied the petition for rehearing on March 6, 1984 (Pet. App. 2a).

After the money had been forwarded to the Treasury, the government moved to dismiss the appeal for lack of jurisdiction. Petitioner opposed the motion and alleged that the government had attempted to make the appeal moot by fraudulent and unethical conduct. The Ninth Circuit dismissed the appeal, finding that it lacked jurisdiction under *United States* v. *$57,480.05 United States Currency, supra*, and that petitioner had not shown that the government's conduct was either fraudulent or improper (Pet. App. 3a).

3. Petitioner's contention (Pet. 6-9) that the court of appeals erred in dismissing the appeal lacks merit. Despite clear guidance from the United States Attorney and the court of appeals, petitioner refused to comply with the rules governing stays. Under the circumstances, petitioner cannot complain that the currency was transferred to the Treasury and his appeal dismissed. As the court of appeals concluded, the government's behavior was hardly fraudulent or improper — petitioner was told repeatedly what would happen if he did not take the proper steps, yet he did not take them.[3] In the absence of any suggestion of a conflict among the courts of appeals on the issue whether a

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[3]Petitioner's argument (Pet. 6-9) that the court of appeals' order violates the rule of *The Rio Grande*, 90 U.S. (23 Wall.) 458 (1874), is meritless. In The *Rio Grande*, the Court held that the "accidental or fraudulent or improper removal of [a res] from [the marshal's] custody * * * does not destroy jurisdiction" (*id.* at 465). The Ninth Circuit, in

court lacks jurisdiction over a forfeiture appeal after the currency is transferred to the Treasury, there is no reason for the Court to review the court of appeals' decision.[4]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Acting Solicitor General

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United States v. *$57,480.05 United States Currency*, *supra*, recognized that, under the holding of *The Rio Grande*, removal of the res from the court's control ends the jurisdiction of the court, except where, as in *The Rio Grande*, the res is released accidentally, fraudulently, or improperly. In the instant case, the court of appeals held (Pet. App. 3a) that the government's ultimate transfer of the currency to the Treasury was neither fraudulent nor improper, so its decision follows the rule of *The Rio Grande*.

[4]Petitioner's other contentions are frivolous. He argues, first, that the government seized the currency "without a scintilla of proof that it was in any way illegally acquired" (Pet. 4-6), and, second, that summary judgment was improper "since at least one (1) of the men carrying the money disputed the government's claim that said money was drug related" (Pet. 10). Petitioner's claim that there was no proof that the money was drug related is simply wrong. His claim that there was a valid dispute about this was rejected by the district court, which correctly refused to credit petitioner's unsupported assertions (Findings of Fact and Conclusions of Law at 7). In any event, there is no warrant for review by this Court of these factual issues, which were not decided by the court of appeals because it lost jurisdiction of the appeal.